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STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Y.D.,
Police Officer (S9999M), Plainfield

CSC Docket No. 2013-2310

Medical Review Panel Appeal

ISSUED: **DEC - 5 2014**

(BS)

Y.D, represented by Ciro Spina, Esq., appeals her rejection as a Police Officer candidate by the City of Plainfield and its request to remove her name from the eligible list for Police Officer (S9999M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on August 27, 2014, which rendered its report and recommendation on August 29, 2014. Exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Matthew Guller (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as being in the average range of intellectual functioning. The behavioral history included a simple assault conviction in 2000, and being charged with disorderly conduct and resisting arrest in 2003. The latter charges were dismissed. Also in 2003, the appellant was charged with domestic violence and criminal mischief. Dr. Guller cited the appellant's legal history, the difference in her account of the incidents as compared to the police reports, and the interpretation of the psychological testing as concerns. Dr. Guller concluded that there were concerns about the appellant's credibility and her ability to "regulate her emotions and deal calmly and effectively with emotionally charged situations." Dr. Guller failed to recommend the appellant for employment as a Police Officer.

Dr. Daniel Williams (evaluator on behalf of the appellant) carried out a psychological evaluation of the appellant. Dr. Williams characterized the appellant as being within the average range of intellectual functioning and found no indicators of psychopathology. With regards to the appellant's personality, Dr. Williams opined that she "appears to be a rather stable individual, emotionally and her ability to regulate and/or channel her impulses into more socially acceptable forms of expression [*sic*]." Dr. Williams did not indicate what scoring system he used in his interpretation of her responses to the Rorschach nor did he comment on her legal history. Dr. Williams concluded that the appellant did "not exhibit any psycho-pathology of sufficient magnitude that it might preclude her functioning effectively as a Police Officer."

The Panel concluded that the negative recommendation found support in indications related to the appellant's legal history. Although only one of the charges resulted in a conviction, and all were eventually expunged, the concern to the Panel was not about the ultimate legal disposition, but rather whether or not mental factors were present that would render the appellant unfit for the position. The Panel noted that the incidents described in the police reports and the recent recollections of one of the officers were deemed to be reflective of someone who has difficulties with emotional control. The Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is mentally unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld. The Panel recommended that the appellant be removed from the eligible list.

In her exceptions, the appellant asserts that her last legal incident occurred in 2003, more than 11 years ago. Since then, the appellant was employed by UMDNJ and is currently employed as a Juvenile Detention Officer and has had no incidents, problems, or disciplinary actions at work in either position. She argues that her work with juveniles requires a "softer" approach, which someone who had difficulty with emotional control would not be able to achieve. Accordingly, the appellant argues that the Panel "erred" in arriving at its conclusions.

CONCLUSION

The Class Specification for Police Officer is the official job description for such municipal positions within the merit system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

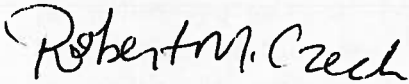
The Civil Service Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and found that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant's ability to effectively perform the duties of the title. The Commission finds that the appellant's recent employment information included in the appellant's exceptions do not persuasively dispute the findings and recommendations of the Panel in this regard. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the raw data and recommendations and conclusions drawn by the various evaluators prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented to it. The Panel's observations regarding the appellant's appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. There are substantial linkages in the Panel's report and recommendation with Dr. Guller's findings regarding her legal history, credibility, and difficulties with emotional control. While perhaps lacking any specific mental pathology, the appellant's actions during the altercations in the record, even though somewhat remote in time, remain cause for concern. The Commission notes that a Police Officer occupies a far more visible role within the community than a Juvenile Detention Officer, and as such candidates for employment as Police Officers are held to a higher standard of personal accountability. Therefore, based on the totality of the data presented, the Commission finds that the appellant's behavioral history is not conducive to her successfully functioning as a Police Officer at this time. Having considered the record and the Medical Review Panel's report and recommendation issued thereon and the exceptions filed on behalf of the appellant, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's report and recommendation.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that Y.D. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that her name be removed from the subject eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF DECEMBER, 2014**



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence:**

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Attachments

c: Y.D.
Ciro Spina, Esq.
Eric Berry
Kenneth Connolly

TO: State of New Jersey, Department of Personnel
Merit System Practices & Labor Relations

FROM: Medical Review Panel
(Angelica Diaz-Martinez, Psy.D., Evan Feibusch, M.D., Joel Friedman, Ph.D.)

RE: [REDACTED]

DATE: 8/27/2014

Identifying Information:

Ms. [REDACTED] is a 33-year-old applicant to the City of Plainfield for the position of Police Officer. Her name was removed from the eligibility list of the hiring authority for the reason of being psychologically unfit for the position. The applicant was interviewed by Matthew Guller, J.D., Ph.D. on behalf of the hiring authority, and by Daniel Williams, Ph.D. on behalf of the applicant. Ms. [REDACTED] was present at the meeting along with her attorney, Ciro Spina, Esq. Dr. Guller was present on behalf of the hiring authority.

Documents Reviewed:

- Psychological Report, Matthew Guller, J.D., Ph.D., 1/24/2013
- Institute for Forensic Psychology Standard Interviewer's Report Form, Dr. Guller, 1/15/2013
- Speed Completion Form, 1/15/2013
- Biographical Summary Form, undated
- Background Investigation, Det. Adam Green, July 2012
- Student Transcript, Plainfield School District, undated
- Certified Driver Abstract, 6/20/2012
- NJ Automated Traffic System Ticket Inquiry, 7/4/2012
- NJ Automated Traffic System General Inquiry, 2/8/2012
- Plainfield Police Division Report, W. Belk, 3/22/2000
- Plainfield Police Division Report, C. Montgomery, 10/12/2003
- Plainfield Police Division Report, Ofc. Myers, 11/22/2003
- Results of the Candidate and Officer Personnel Survey ("COPS"), 1/15/2013
- Personality Assessment Inventory (PAI) Police and Public Safety Selection Report, 1/15/2013
- California Psychological Inventory Police and Public Safety Selection Report, 1/15/2013
- Psychological Report, Daniel Williams, Ph.D., 9/17/2013
- Protective Services Report Plus, Profile Summary, 9/17/2013

Findings of Previous Examiners:

Dr. Guller conducted a psychological evaluation that included a clinical interview and the tests and questionnaires noted above. On the Shipley Institute of Living Scale, Ms. [REDACTED]'s IQ was estimated at 96, placing her in the range of average intellectual functioning. Dr. Guller reviewed Ms. [REDACTED]'s legal history. In 2000 she was convicted on a charge of a simple assault. In 2003 she was charged with disorderly conduct and resisting arrest. Ms. [REDACTED] said that she was not moving fast enough for the police when they asked her to leave a location, which led to the arrest. The charges were dismissed. Also in 2003, Ms. [REDACTED] was charged with domestic violence and criminal mischief. She said that she had dropped her son off at his father's home and had

slammed the door, as it was heavy. Her son's father called the police, which resulted in her arrest.

Dr. Guller cited Ms. [REDACTED]'s legal history, the difference in her account of the incidents as compared to the police reports, and the interpretation of psychological testing as concerns. He concluded that there were concerns about her credibility and her ability to "regulate her emotions and deal calmly and effectively with emotionally charged situations" and she was found to not be psychologically suitable for the position.

Dr. Williams administered the Wechsler Adult Intelligence Scale (WAIS-III), the Bender Visual Motor Gestalt Test, the Rorschach, and the Protective Service Report Plus. The WAIS-III placed Ms. [REDACTED]'s IQ at 103, within the average range of intellectual functioning. Dr. Williams' interpretation of the Protective Service Report Plus was that no indicators of pathology were present. Ms. [REDACTED]'s performance on the Bender did not contain significant errors. Dr. Williams described his finding related to Ms. [REDACTED]'s personality as she "appears to be a rather stable individual, emotionally and her ability to regulate and/ or channel her impulses into more socially acceptable forms of expression." Dr. Williams did not comment on what scoring system he used in his interpretation of the Rorschach. He also did not comment on Ms. [REDACTED]'s legal history.

Dr. Williams concluded that Ms. [REDACTED] "does not exhibit any psycho-pathology of sufficient magnitude that it might preclude her functioning, effectively as a Police Officer."

Review of Collateral Records

Plainfield Police, Simple Assault, 3/22/2000:

Records indicate that police responded to a report of a fight. Ms. [REDACTED] told the police that she had an argument with SL that had escalated into a fight. SL had sprayed "mace" in her eyes and Ms. [REDACTED] was seen in the emergency room as a result.

Plainfield Police, Resisting Arrest, 10/12/2003:

Police were dispersing a group of individuals when Ms. [REDACTED] caught an officer's attention due to her saying, "F-ck the police you can't make us move," and "you think you're so tough with your night sticks." She was asked to leave or be arrested for failure to disperse. She continued her behavior and was subsequently placed under arrest. During the process she would not cooperate with the officer's requests to put her hands behind her back.

Plainfield Police, Criminal Mischief, 11/22/2003:

Records indicate that Ms. [REDACTED] had brought her son to his father's home for a scheduled visitation. When the child's father told her that it was not a good time for the visitation, Ms. [REDACTED] became upset, removed a baseball bat from the trunk of her car, and broke out the exterior door window. The police report described Ms. [REDACTED] as having "fled the area" prior to his arrival and a warrant was filed.

Plainfield Police, Background Investigation, July 2012:

Ms. [REDACTED]'s account of the circumstances surrounding her arrests to the officer investigating her background was consistent with what she had told Dr. Guller and the MRP. The officer obtained a negative account of her demeanor from an employee at her apartment building. A positive reference was obtained from Ms. [REDACTED]'s supervisor at UMDNJ. Positive personal references [REDACTED]

were obtained from three friends of Ms. [REDACTED], as well as her mother and sister. The officer also conducted a telephone interview with the former Plainfield officer who was involved in her 2003 arrest. The officer readily recalled the incident, and his account was consistent with what was in the 2003 police report.

Ms. [REDACTED]'s Appearance Before the Panel:

Ms. [REDACTED] presented as a neatly dressed woman who appeared to be about her stated age. Her behavior during the MRP was unremarkable and she did not show signs of overt psychopathology such as psychosis or thought disorder. She answered the questions of the MRP in a cooperative manner.

Regarding her employment history, Ms. [REDACTED] said that she had been employed as a Juvenile Detention Officer in Union County since September 2013. She stated that she had not had any problems in that position. Prior to that she had worked for UMDNJ since 2003 in various technical positions (phlebotomist, EKG technician, lab technician). She stated that she had never any difficulties in that position.

She described her legal history to the MRP. The 2000 simple assault was as a result of a fight. She and the other participant were both charged, but only Ms. [REDACTED] was convicted. She believed that this was due to her not having an attorney. She denied engaging in any of the behaviors that had resulted in her 2003 arrest related to her interaction with the police. She also said that she had not engaged in the behaviors that her son's father had described that led to her other 2003 arrest. Ms. [REDACTED] stated that she had not had any negative interactions with the police in the intervening period of time.

The MRP asked Ms. [REDACTED] to elaborate on a few items on the PAI that was administered by the IFP that came up as "critical." Regarding the question "People would be surprised if I yelled at someone," to which she had answered "false," she explained that she had answered the question incorrectly. Regarding, "I'm not afraid to yell at someone to get my point across," to which she had responded "very true," she described this as "situational." Regarding, "I don't like raising my voice," to which she had responded "false," she stated, "I have no problem raising my voice."

Conclusion:

In Ms. [REDACTED]'s case, the evaluators on behalf of the applicant and the hiring authority reached differing conclusions and recommendations. Dr. Guller cited concerns about Ms. [REDACTED]'s legal history and results of her testing. Dr. Williams did not find significant issues in the testing he had administered. He did not comment on Ms. [REDACTED]'s interactions with the legal system.

The MRP was concerned about Ms. [REDACTED]'s legal history. We recognize that the charges, with the exception of the simple assault, were dismissed and eventually expunged. The question before the MRP is not about the ultimate legal disposition, but rather whether or not mental factors are present that would make the applicant unfit for the position. The incidents as described in the police reports and the recent recollection of one of the officer's were deemed to be reflective of difficulties with emotional control. The psychological testing was not seen as inconsistent with this, for example, Ms. [REDACTED]'s responses to questions about raising her voice.

Taking into consideration the evaluations of Drs. Guller and Williams, Ms. [REDACTED]'s presentation, the psychological test results, and the behavioral record when viewed in light of the job specifications for Police Officer, it indicates that the applicant is not mentally fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld.

Recommendation:

It is the recommendation of the Panel that the candidate, [REDACTED], be removed from the employment eligibility list.

Evan L. Feibusch M.D.

Evan L. Feibusch, M.D.
Diplomate of the American Board of
Psychiatry with Certification in the
Subspecialty of Forensic Psychiatry

8/29/2014

Date

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REPLY TO: CLIFTON

By Appointment Only: Cherry Hill | Toms River | Freehold
Metropark (Woodbridge) | Princeton | East Brunswick | Newark | Jersey City

October 2, 2014

VIA FACSIMILE 609-984-0442

Attention: Elaine Dundala

A & RA

New Jersey Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625

Re: [REDACTED] Appeal
Docket No.: 2013-2310

Dear Mrs. Dundala:

Please be advised that this office represents Ms. [REDACTED] with respect to the above captioned matter. Kindly accept this correspondence as exceptions to the Medical Review Panel's decision dated August 29, 2014, mailed on or about September 11, 2014 and received at my new office on September 29, 2014. Please be advised that while I forwarded my mail, there seems to be an issue with me receiving my mail. Therefore, please make sure that all future correspondence is addressed to the new Clifton address above.

It seems that the only reason the Panel found that Ms. [REDACTED] is not mentally fit to perform effectively the duties of the position sought is because the Panel is concerned about Ms. [REDACTED]'s legal history. The Panel found that there are mental factors present which deemed to be reflective of difficulties with emotional control. While I understand the Panel's position, I respectfully disagree. The last legal incident involved in by Ms. [REDACTED] was in 2003. Since 2003, approximately 11 or so years ago, Ms. [REDACTED] has not had any other legal incidents. Therefore, assuming that Ms. [REDACTED] had difficulty with emotional control, that is no longer present.

Further, from 2003 until 2013, Ms. [REDACTED] was employed by UMDNJ and had no issues at work, no no problems at work and no disciplinary action taken at work. Clearly, Ms. [REDACTED] has shown an ability to competently work and have no difficulties with emotional control. This is further evidenced by Ms. [REDACTED] being employed as a juvenile detention officer in Union County for the past year and having no issues at work, no problems at work and no disciplinary action taken at work. It is of note that to work with juveniles requires a "softer" approach, which someone who had difficulty with emotional control would not be able to achieve.

Based upon the above, the Panel erred when it found Ms. [REDACTED] has difficulty with emotional control.

A copy of this correspondence has been simultaneously faxed to Eric Berry, Office of the City Administrator for Plainfield.

Very truly yours,

Ciro Spina, Esq.

Ciro Spina, Esq.

C: Eric Berry (Via fax only 908-226-2574)